

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

**JEANETTE WOOLSEY, on behalf
of R.M.R.,**

Petitioner,

v.

**DESIREE MITZEL and CHARLES
MITZEL,**

Respondents.

**Civil Action No.
1:17-CV-0074 (TJM/DEP)**

**THOMAS J. McAVOY,
Senior United States District Judge**

DECISION & ORDER

I. INTRODUCTION

This *pro se* petition for a *writ of habeas corpus* pursuant to 28 U.S.C. § 2254 was referred to the Hon. David E. Peebles, Chief United States Magistrate Judge, for a Report and Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.4. In his February 27, 2017 Report, Recommendation and Order, dkt. # 11, Magistrate Judge Peebles recommends that (1) the petition (Dkt. No. 2) in this matter be dismissed; (2) Petitioner's motion for reconsideration of the transfer order from the Eastern District of New York (Dkt. No. 8) be denied as moot; and (3) a certificate of appealability not be issued in this action. Petitioner filed objections to the Report, Recommendation and Order. See Obj., Dkt. # 18.

II. STANDARD OF REVIEW

When objections to a magistrate judge's report and recommendation are lodged, the district court makes a "*de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." See 28 U.S.C. § 636(b)(1)(C); see also United States v. Male Juvenile, 121 F.3d 34, 38 (2d Cir.1997)(The Court must make a *de novo* determination to the extent that a party makes specific objections to a magistrate's findings.). After reviewing the report and recommendation, the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions." 28 U.S.C. § 636(b)(1)(C).

III. DISCUSSION

Having considered Petitioner's objections and reviewed the issues *de novo*, the Court determines to accept Magistrate Judge Peebles's recommendations for the reasons stated in the February 27, 2017 Report, Recommendation and Order.

IV. CONCLUSION

Therefore, the Court **ACCEPTS and ADOPTS** the recommendations made by Magistrate Judge Peebles in the February 27, 2017 Report, Recommendation and Order, dkt. # 11. For the reasons set forth therein, the petition is **DENIED and DISMISSED**.

Further, Petitioner's motion for reconsideration of the transfer order from the Eastern District of New York (Dkt. No. 8) is **DENIED as moot**.

The Court also finds that the petition presents no questions of substance for

appellate review, and that Petitioner has failed to make a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); see Fed. R. App. P. 22(b).

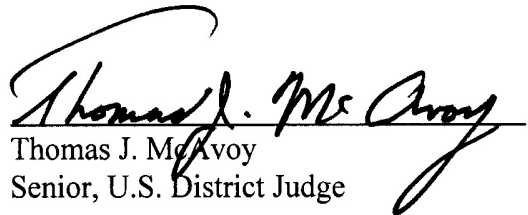
Accordingly, a **certificate of appealability will not issue**.

Further, Respondents’ motion to dismiss (Dkt. # 20) is **DENIED as moot**.

Further, Petitioner’s motion for Leave to Proceed *In Forma Pauperis* in Support of the Application to Appoint Counsel (Dkt. # 21) is **DENIED as moot**.

IT IS SO ORDERED.

Dated: May 22, 2017


Thomas J. McAvoy
Senior, U.S. District Judge